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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[FRL-5983-7]

Technical Amendments to Clean Air Act Interim Approval of Operating Permits Program; Commonwealth of Virginia; Correction of Effective Date Under Congressional Review Act (CRA)**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correction of effective date under CRA.

SUMMARY: On June 10, 1997 (62 FR 31516), the Environmental Protection Agency published in the **Federal Register** a final rule granting interim approval, pursuant to Title V of the Clean Air Act, of the operating permits program which the Commonwealth of Virginia had submitted for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources. The June 10, 1997, document stated that the interim approval would be effective July 10, 1997. This document corrects the effective date of the interim approval to March 12, 1998, consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This interim approval is effective on March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, OAR, at (202) 260-9766.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). The EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated June 10, 1997, by operation of law, the rule did not take effect on July 10, 1997, as stated therein. Now that EPA has discovered its error, EPA is submitting the rule to both

Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 10, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule, to the extent they applied, is discussed in the June 10, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the

U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), the Agency finds that there is good cause to make this rule effective on March 12, 1998, for the reasons stated previously. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of the amendment.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 12, 1998.

Carol M. Browner,
Administrator.

For reasons set out in the preamble, Appendix A to part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by revising paragraph (a) in the entry for Virginia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Virginia

(a) The Commonwealth of Virginia's Title V operating permit and fee program regulations submitted on September 10, 1996, the acid rain operating permit regulations submitted on September 12, 1996, and the non-regulatory operating permit program provisions submitted on November 12, 1993, January 14, 1994, January 9, 1995, May 17, 1995, February 6, 1997, and February 27, 1997; interim approval effective on March 12, 1998; interim approval expires on March 12, 1999.

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